

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DUANE BEDENFIELD,

Defendant-Appellant.

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UNPUBLISHED  
February 20, 2007

No. 264850  
Berrien Circuit Court  
LC No. 2005-410552-FH

Before: Fort Hood, P.J., and Smolenski, and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of unarmed robbery, MCL 750.530. He was sentenced as a habitual offender, third offense, MCL 769.11, to 7 to 30 years' imprisonment. Defendant appeals as of right, and we now affirm.

This case arises out of defendant's involvement in the robbery of a wallet from a highly intoxicated drinking companion, Brent Burchell, in the early morning hours of January 8, 2005. Burchell's girlfriend, Medena Ransberger, telephoned 911 to report that defendant and Kelvin Robinson had just attacked Burchell, hit him in the head with a frying pan, ripped his wallet from the chain that tethered it to his pant's belt, and run from the apartment where the group had been drinking beer. As she spoke to the operator, Ransberger explained that she could see the two men fleeing toward a nearby intersection. Police officers arrived within minutes of the dispatch call and observed two sets of fresh footprints in the new snow. The officers located Robinson and defendant hiding nearby. The police recovered papers, which were identified as the contents of Burchell's wallet, on the ground near the footprints. Defendant had the chain from the victim's wallet in his coat pocket, and Robinson was found with \$15 of the victim's money.

Defendant's first issue on appeal is that the trial court's admission into evidence of his two prior breaking and entering convictions violated MRE 404(b) and constituted an abuse of discretion. The argument is without merit. The trial court admitted the evidence under MRE 609, not MRE 404(b), and the challenged evidence was properly admitted under that evidentiary rule.

This Court will not reverse a trial court's decision to allow impeachment by evidence of a prior conviction absent an abuse of discretion. *People v Hicks*, 185 Mich App 107, 110; 460 NW2d 569 (1990). A trial court abuses its discretion by admitting evidence if no "substantial and compelling reason exists to justify" its admission. *People v Babcock*, 469 Mich 247, 269;

666 NW2d 231 (2003). This abuse of discretion standard acknowledges that there are circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome. *Id.* When a trial court selects one of these principled outcomes, it has not abused its discretion, and it is proper for the reviewing court to defer to the trial court's judgment. *Id.*

In *People v Allen*, 429 Mich 558, 595; 420 NW2d 499 (1988), our Supreme Court established a balancing test for the admission of evidence of a prior theft crime when the witness is the accused. The Court explained that theft crimes are probative of truthfulness and are therefore admissible if the probative value outweighs the prejudicial effect. *Id.* at 605-606. The felony offense of breaking and entering has elements of theft and is "minimally probative" of veracity. *People v Bartlett*, 197 Mich App 15, 19; 494 NW2d 776 (1992).

Here, the trial court meticulously articulated on the record each factor required under MRE 609<sup>1</sup> before admitting the evidence. The trial court found that the prior breaking and entering with intent to commit larceny convictions were probative of dishonesty, and that defendant's 1999 and 2002 convictions were still relevant in 2005. As to the prejudice factor, the trial court determined that the evidence's probative value outweighed its prejudicial effect

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<sup>1</sup> MRE 609 provides:

(a) For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross examination, and

(1) The crime contained an element of dishonesty or false statement, or

(2) The crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

(b) For purposes of the probative value determination required by subrule (a)(2)(B), the court shall consider only the age of the conviction and the degree to which a conviction of the crime is indicative of veracity. If a determination of prejudicial effect is required, the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.

because the armed robbery offense charged was not similar to the prior convictions for breaking and entering. See *People v Lester*, 172 Mich App 769, 773; 432 NW2d 433 (1988). The trial court also noted that defendant received advance notice of the prosecutor's intent to impeach by prior conviction and the evidence did not have a chilling effect on defendant's decision to take the stand in his own defense. *Id.* Further, after admitting the evidence, the trial court gave a proper limiting instruction to the jury. The trial court did not abuse its discretion in admitting the evidence.

Defendant next argues that several instances of prosecutorial misconduct denied him a fair trial. He claims that the prosecutor's rebuttal arguments attacked the integrity of defense counsel, improperly shifted the burden to the defense to explain damaging evidence, and relied on facts not in evidence or misstated the evidence.

Defendant's alleged prosecutorial errors are unpreserved. Our review is therefore limited to plain error affecting defendant's substantial rights. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). When reviewing a claim of prosecutorial misconduct, this Court must evaluate a prosecutor's remarks in the context of the particular facts of the case and determine whether the remarks are supported by the evidence admitted at trial. *People v Bahoda*, 448 Mich 261, 267; 531 NW2d 659 (1995).

The first instance of prosecutorial misconduct alleged by defendant is that the prosecutor denigrated defense counsel during her rebuttal arguments. A prosecutor may not suggest that defense counsel is intentionally misleading the jury. *People v Dalessandro*, 165 Mich App 569, 580; 419 NW2d 609 (1988). However, an otherwise improper remark may not require reversal when the prosecutor is responding to defense counsel's argument. *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Here, during closing, defense counsel emphasized discrepancies in the testimony of the victim's girlfriend and asked the jury to infer from those discrepancies that she planted physical evidence to implicate defendant and Robinson in the robbery. On rebuttal, the prosecutor began by saying: "Apparently when you have no defense, no logical defense, about all you can do is come up with illogical and ridiculous defenses." The prosecutor thereafter focused on defense counsel's alternative explanation for why the non-cash contents of the victim's wallet were found near defendant's footprints. Defense counsel suggested that Ransberger ran out to the street and dropped the papers. The prosecutor noted that it was "absurd" and "ridiculous" to suggest that Ransberger waited to call 911 because the police located defendant and Robinson within two blocks of the apartment.

Contrary to defendant's assertion, the prosecutor did not suggest that defense counsel was intentionally misleading the jury. Rather, the prosecutor's comments urged the jury to examine the evidence and to disregard the illogical alternative scenario proposed by defense counsel. When read in context, the prosecutor's remarks were not personal attacks infringing on defendant's rights. They were made in response to evidence admitted at trial and to rebut defense arguments. *Callon, supra* at 330. See, also, *People v Matuszak*, 263 Mich App 42, 55-56; 687 NW2d 342 (2004) (Prosecutor's characterization of defense arguments as "ridiculous" did not amount to plain error).

The second instance of alleged prosecutorial misconduct relates to the following comment:

What's interesting is that kind of neglect to say [sic] what his reason for having the chain in his coat is. No where in his argument did he say, and by the way, the reason that he ended up having the victims [sic] chain in his pocket, was what? He didn't argue anything to you.

Defendant asserts on appeal that this statement improperly shifted the burden of proof to him to explain why the chain was in his pocket and whether the chain came from defendant's wallet. "[A] prosecutor may not imply in closing argument that defendant must prove something or present a reasonable explanation for damaging evidence because such an argument tends to shift the burden of proof." *People v Green*, 131 Mich App 232, 237; 345 NW2d 676 (1983). However, in *People v Fields*, 450 Mich 94, 107; 538 NW2d 356 (1995), our Supreme Court ruled that, where a defendant either explicitly or implicitly advances an alternate theory of the case that, if true, would exonerate the defendant, comment on the validity of this alternate theory does not shift the burden of proof to the defendant. *Id.* at 115. The Court noted that, "[t]he protective shield of the Fifth Amendment should [not] be converted into a sword that cuts back on the area of legitimate comment by the prosecutor on the weaknesses in the defense case." *Id.* at 109, quoting *United States v Hasting*, 461 US 499, 515; 103 S Ct 1974; 76 L Ed 2d 96 (1983) (Stevens, J., concurring).

Here, defendant had no duty to testify and no burden to explain the origin of the chain in his pocket. Defendant did not rely on the presumption of innocence, however. Rather, he chose to testify and, in so doing, put the credibility of his explanation for the wallet chain found in his pocket into question. *Fields, supra* at 109. Defendant testified in detail about the style and construction of his wallet in an attempt to explain how the chain found in his pocket attached to the wallet. When viewed in context, the prosecutor's challenged comment introduced an extended discussion of the implausibility of defendant's claim that the chain was part of his own wallet. The prosecutor asked the jury to compare the two wallets entered in to evidence and noted that defendant's wallet did not appear to have the construction of a chain wallet. We find that the comment was narrowly focused on impeaching defendant's testimony and did not improperly shift the burden of proof.

Defendant also asserts that the prosecutor argued facts not in evidence or misstated the evidence in her rebuttal arguments. Because defendant did not cite the record for instances of improper argument, he has not properly presented this issue for review. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). After reviewing the record, we find no support for defendant's claim that the prosecutor misstated the evidence.<sup>2</sup>

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<sup>2</sup> In any event, defendant has failed to show that any of the prosecutor's comments were outcome determinative. The trial court instructed the jury that they could not consider the lawyers' arguments as evidence and we presume that juries follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). We also note that, because the prosecutor's rebuttal comments were proper, it was objectively reasonable for defense counsel not to object to them.

(continued...)

Defendant's final issue on appeal is that the evidence at trial was insufficient to enable a rational jury to conclude that he committed unarmed robbery. When reviewing a challenge to the sufficiency of the evidence, this Court reviews the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). This Court does not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). A trier of fact may make reasonable inferences based on direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of unarmed robbery are: (1) a felonious taking of property from another; (2) by force, violence, assault or putting in fear; (3) while unarmed. MCL 750.530; *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Unarmed robbery is a specific intent crime. *People v Dupie*, 395 Mich 483, 487; 236 NW2d 494 (1975). It requires proof that the defendant intended to permanently deprive the owner of his property. *People v Fordham*, 132 Mich App 70, 75; 346 NW2d 899 (1984), rev'd on other grounds 419 Mich 874 (1984). The defendant's intent may be inferred from his conduct and from facts and circumstances established beyond a reasonable doubt. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

We find that the prosecutor presented sufficient evidence identifying defendant as the robber. Viewed in a light most favorable to the prosecution, the testimony established a felonious taking of property by defendant through the use of violence while unarmed. Burchell's testimony established that he "vaguely" remembered defendant pulling on his pants and taking his wallet. Ransberger testified that she heard defendant suggest to Robinson, in the midst of the fight preceding the theft, that they take Burchell's property. She further testified that defendant pulled on Burchell's pants and tore the wallet from the pants. The content of her 911 call was consistent with her trial testimony. The jury apparently rejected defendant's testimony that the chain found in his pocket was part of his own wallet after they had an opportunity to compare the construction of both wallets. This Court will not disturb a jury's determination of witness credibility. *Vaughn, supra* at 379-380.

When viewed in the light most favorable to the prosecution, the evidence was clearly sufficient to support that defendant feloniously took the wallet from Burchell by force or violence.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Michael R. Smolenski  
/s/ Christopher M. Murray

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(...continued)

Therefore, counsel's failure to object to these comments does not constitute ineffective assistance of counsel. *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).